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OFFICE OF PETITIONS

THOMPSON HINE, LLP
10 WEST BROAD ST.
COLUMBUS, OH 43215

In re Patent No. 5,850,180 :
Issue Date: March 19, 2002 : Letter
Application No: 09/690,613 :
Filing Date: October 16, 2000 :
Attorney Docket No: ULTIMATE-38322 :

REQUEST FOR INFORMATION

A renewed petition under 37 CFR 1.378(b) was filed on September 7, 2011 to accept the delayed payment of a maintenance fee for the above-identified patent.

Petitioner should submit the requested information within **TWO MONTHS** of the mailing date of this letter. Extensions of time may not be obtained. No additional fee is due for a response to the instant request for information. The response to this Requirement for Information should include a cover letter entitled "Response to Request for Information." The failure to file a reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

The instant renewed petition contains declarations from David Intil Choi, Jong Man Lee, Yong Hwan Kei, and Ki Bong Park. None of these declarations comply with the provisions of 35 U.S.C. 25 and 37 CFR 1.68. Petitioner is reminded that:

[A]ny document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration. Such declaration may be used in lieu of the oath otherwise required, if, and only if, the declarant is on the same document, warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. The declarant must set forth in the body of the declaration that all statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true.

Petitioner is required to resubmit the declarations so as to be in compliance with 35 U.S.C. 25 and 37 CFR 1.68.

Furthermore, a showing of unavoidable delay based upon financial condition must establish that the financial condition of the petitioner during the entire period of the delay was such as to excuse the delay. See Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). Petitioner is required to provide a showing of their financial condition during the entire period of delay. Such showing should include all income, expenses, assets, credit, and obligations, which made the delay in payment of the maintenance fee from March 19, 2005, until the filing of the petition on November 15, 2010, "unavoidable".

Additionally, the requirement of 37 CFR 1.378(b)(3) which states in pertinent part that a petition to accept delayed payment of a maintenance fee must "enumerate the steps taken to ensure timely payment of the maintenance fee, the date, and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly," remains to be addressed by petitioner.

The showings supplied with the renewed petition, and those previously of record, only speak to the fact that from 2004 petitioner knew of the requirement to pay maintenance fees. However, any petition seeking reinstatement must also enumerate, under the rule, the steps that were taken to ensure timely payment of the maintenance fee, which must necessarily be steps taken *prior* to the expiration of the patent.

The record still lacks a documented showing that petitioner was engaged in tracking the maintenance fee due dates, and that party had in fact been tracking the due dates with a tracking system such as would be used by a prudent and careful person in relation to his or her most important business. But see 37 CFR 1.378(b)(3); MPEP 2590.

Any renewed request for reconsideration should include at a minimum, and make reference to, copies of documents showing: (1) who was the responsible party for tracking the payment, and (2) the steps in place by that party. If the steps in place included a docketing or tracking system, how that system worked, who administered the system, as well as the level of training, expertise, and degree of supervision of the involved personnel, is also required.

An adequate showing requires statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts, as they know them. At the time the above-identified patent issued who was responsible for annotating the file. A statement from the party responsible for annotating the file is required along with information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries regarding this communication should be directed to April Wise at (571) 272-1642.

/dab/
David Bucci
Petitions Examiner
Office of Petitions